IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1109 OF 2002

National Textile Corporation
(Maharashtra North) Limited,
Unit: Kohinoor Mills,
4, M.M.G.S. Road,
Dadar, Mumbai-14. .... Petitioner

- Versus -

1. Arvind Mahadev Gharat,
   Yeshwant Patil Chawl,
   Near Govandi Rly.Station,
   Behind Gurudutta Laundry,
   Deonar, Govandi,
   Bombay-400 088.

2. The Judge,
   XIth Labour Court,
   Bombay, having his office
   at New Administrative
   Building, Bandra (E),
   Bombay. .... Respondents

AND

WRIT PETITION NO.1110 OF 2002

National Textile Corporation
(Maharashtra North) Limited,
Unit: Kohinoor Mills,
4, M.M.G.S. Marg, Naigaum,
Dadar, Bombay-14. .... Petitioner

- Versus -

1. Mrs. Sushila T. Bhagat,
   1/8, Shivneri,
   Dadasaheb Falke Road,
   Dadar (E),
   Bombay-400 014.

2. The Judge,
   XIth Labour Court,
   Bombay, having his office
   at New Administrative

Building, Bandra (E),
Bombay. .... Respondents

Sarvasri Shirish Naik with Shailesh More
for the Petitioner in both the Petitions.

None for the Respondents (No.1) in both
the Petitions.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 03, 2004

ORAL JUDGMENT:

1. Since common questions of law and facts arise in both the petitions, they were heard together and are being disposed of by this common judgment.

2. Heard the learned Advocate for the petitioners. None present for the respondents (No.1) in both the petitions, though served. Perused the records.

3. In both the petitions, the petitioners challenge the order passed by the Labour Court in the proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947, hereinafter referred to as "the said Act", on the ground that considering the claim put forth by the respondents, it could not have been considered under the said provisions of law as has been decided by number of decisions, including the decision of the learned single Judge of this Court, as he then was, in **Sadanand D.**

Phansekar & Ors. v. National Textile Corpn. (South Mah.) Ltd. & Ors., reported in 1997 II C.L.R. 801 and confirmed by the Division Bench in Original Side Appeal No.1121 of 1997 against the said decision and reported in 1998 I C.L.R. 346.

4. Plain reading of the applications filed by the respondents under Section 33-C(2) of the said Act discloses that the said claim could not have been adjudicated under the said provision of law as has been held in the decision in the matter of **Sadanand Phansekar** (supra).

5. In the Writ Petition No.1109 of 2002, the claim of the respondent was to the effect that:-

> "4. The Applicant states that a section of the mill operatives went on strike from 18th January, 1982. However, he did not participate in the said strike and he did offer himself for work, but he was neither assigned work nor was paid salary. The Applicant states that the Opponent partially commenced operation of the Mills since 10th February, 1984 but the Applicant though offered himself for work, was neither

assigned nor was paid salary. The Applicant states that the mill which was employing more than 10,000 workers prior to the strike of 18th January, 1982 which commenced operation partially from 10th February, 1984 never started operating in full-swing. The said mill was deliberately not run to its full capacity by the Opponents. The Applicant states further that the maximum strength was about a thousand and odd employees at any point of time between February, 1984 to 31st December, 1995.

5. The Applicant states that several employees who ceased to be in the employment by virtue of resignation, superannuation, retirement, upon acceptance of voluntary retirement scheme, and so on, but the said posts were not filled in by the Opponents.

6. The Applicant states that he had met various officers, managers, and other staff requesting them to give work. To name a few, Messrs. Canpule, Rane,

> Patil, Nimbalkar, Chotne, etc. However, work was not assigned to him nor salary was paid. The Applicant states that as he was ready and willing to work and having offered for work, he has discharged his contractual obligations and it is immaterial whether work was given to him or not. He is entitled to wages/salary for the period 1.1.1982 to 31.12.1995."

6. In the Writ Petition No.1110 of 2002, the claim of the respondent in the proceedings under Section 33-C(2) of the said Act was to the effect that:-

> "5. The Applicant states that neither the first Opponent nor the second Opponent herein terminated the services of her husband at any point of time till he tendered resignation. The Applicant states that thus the contract of employment was in subsistence with Kohinoor Mills Company Limited continued to remain in subsistence with the Opponent No.2 corporation on the passing of the Act of 1983 without any variation till 25th July 1986, when her husband

tendered resignation.

7. The Applicant states that a section of mill operatives went on strike, which started on and from 18th January 1982. However, husband of the Applicant was not on strike, which started on and from 18th January 1982. He did not report for work. However, no work was assigned to him nor was he paid any salary. The Applicant states that when the mills started partially functioning, though her husband did report for work, he was not given any work nor was he paid any salary. The Applicant states further that Opponent No.2 did not give work to all the workers who reported for work and a number of workmen who have obtained orders from the court were also not given work and were kept out. The Applicant states that her husband is entitled to the salary for the period 1/1/1982 to 30/9/1983 amounting to Rs.29,757.52 ps. And for the period 1/10/1983 to 25/7/1986 Rs.61,295.96 ps. Hereto annexed and marked Exhibit ‘B’ is the statement giving particulars of

salary due to her husband for the said period.

8. The Applicant states that her husband was also entitled to minimum bonus at the rate of 8.33% of his annual earnings under the Payment of Bonus Act, 1965 for the calendar years 1981 to 1986. The Applicant states that she is claiming bonus at the rate of 8.33% per annum payable to her husband subject to the ceiling under the Payment of Bonus Act, 1965. The Applicant states that her husband was and the Applicant, therefore, is entitled to Rs.1,500/- towards bonus for the calendar year 1981 and 1982 and Rs.4529/- for the calendar years 1983 to 1986, as per the particulars of bonus amount given in a statement annexed hereto and marked Exhibit 'B'."

7. This Court in Sadanand Phansekar's case has clearly held that the scope of Section 33-C(2) of the said Act has been very clearly explained by various judgments of the Supreme Court and it has been held that where computation is a principal relief sought by a worker, an

application under Section 33-C(2) of the said Act will lie. But, where the Court finds that the matter involves determination of rights and liabilities of the parties, inter se, or where the Court finds that the liability of the employer to pay wages is dependent upon the workman proving the conditions precedent to accrual of such liability, then adjudication under Section 10 of the said Act or Section 78 of the B.I.R. Act, as the case may be, is warranted. The Division Bench while confirming the decision in Sadanand Phansekar's case has ruled thus:-

> "The learned single Judge has rejected the Application under Section 33-C(2) of the Industrial Disputes Act on the ground that the status of the reliefs claimed by the Applicant involves disputed and complicated questions of law and facts which are required to be decided. The learned Judge also observed that the facts of the case clearly indicate that certain Departments of the National Textile Corporation could not provide work up to 1988. In the context of the controversy regarding the validity of the closure, resort to adjudication would have

> clearly indicated as to for what period the Departments are closed; whether the closure was temporary or permanent and whether the said closure was bona fide or not. The learned Judge further observed that all these controversies could not have been decided under Section 33-C(2). Prior to this finding, the Court arrived at the conclusion, on admitted facts, that the petitioners were working during the relevant period in Digvijay Textile Mills right from 1983."

8. Considering the law laid down on the point in issue and considering the grievance sought to be made by the respondents in the applications filed under Section 33-C(2) of the said Act, it is apparent that before computation of the amount of wages claimed by the workmen, it was necessary to deal with various issues regarding the rights and liabilities of the parties, inter se, and only on the basis of the findings arrived at in relation to such rights and liabilities, the question of computation of wages would arise. In the circumstances, the learned Advocate for the petitioners is justified in contending that the Court below erred in allowing the applications ignoring the law laid down by

this Court in Sadanand Phansekar's case and on that count alone, the impugned orders cannot be sustained and the original applications were liable to be rejected. Needless to say that this, however, would not prevent the workmen from pursuing with the remedy, if any, available under the law, in relation to their claim for wages by taking recourse to the proceedings under the said Act or the B.I.R. Act, as the case may be. With these observations, the impugned orders are hereby quashed and set aside. The rule is made absolute accordingly in both the petitions with no order as to costs.